IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.404 OF 2007
IN
NOTICE OF MOTION NO.674 OF 2007
IN
SUIT NO.371 OF 2007

Ramawatar R. Gupta .... Appellant
Vs.
The Bank of Rajasthan Limited .... Respondent

Shri R.B. Singh for the Appellant.

Sarvasri Rafique P. Mohiddin with S.S. Ghosh i/b M/s. Paras Kuhad & Associates for the Respondent.

CORAM: R.M.S. KHANDEPARKAR &
S.R. SATHE, JJ.

DATED: JUNE 21, 2007

P.C:

1. Heard. The appellant challenges the order dated 6-3-2007 passed in Notice of Motion No.674 of 2007 in Suit No.371 of 2007 whereby temporary injunction has been refused on account of failure on the part of the appellant/plaintiff to make out a prima facie case for the grant of such relief. The grievance of the appellant is that the impugned order does not discuss elaborately the case of the appellant to ascertain whether the appellant had made out a prima facie case or not. It is to be noted that the impugned order is a discretionary order and merely because the learned single Judge in proof has analysed the materials on

record, that itself would not be a justification to interfere in the impugned order when the findings arrived at are otherwise borne out from the records.

2. The appellant had filed the suit for performance of the alleged agreement for sale of the property. The main grievance of the appellant is that the respondent could not have insisted for payment of the dues to the society on the ground that in the tender notice the same was not disclosed. The contention is devoid of substance in as much as that the tender notice clearly stated that the terms and conditions that shall govern the auction were available in the office of the Bank of Rajasthan Limited. Besides, the auction was on as is where is basis. Undisputedly, the premises were situated in a building the occupants of which have formed a co-operative society. In addition to the above, the records disclose that the obligation regarding the payment of the society's dues was made clear to the appellant on 3-10-2006 under the letter No.1836 by the Bank of Rajasthan. In response to the said letter, the appellant had deposited a cheque for Rs.1,88,250/- as was demanded under the said letter, without making any grievance about the dues which the appellant could be liable to pay towards the arrears of the society. The dispute regarding the arrears of the society was sought to be raised much later on and

apparently it was an afterthought. It is pertinent to note that even a cheque which was deposited by the appellant for an amount of Rs.1,88,250/- was dishonoured when presented for encashment. This apparently discloses failure on the part of the appellant to establish willingness and readiness on the part of the appellant to comply with his obligations under the alleged agreement. In these circumstances, no fault can be found with the impugned order rejecting the interim relief to the appellant. Hence there is no case made out for interference in the impugned order and, therefore, the appeal fails and is summarily rejected.

(S.R.Sathe, J.) (R.M.S.Khandeparkar, J.)

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